

February 3, 2004

Representative John H. Thomas, Chairman
Science, Technology and Energy Committee
Legislative Office Building---Room 303
Concord, NH 03301

SUBJECT: HB-1421-FN Requires Investigations Prior to Issuing Permits, the Use of Best Available Technology, and Restricts Incinerators from Operating Within 5 Miles of Specified Land Uses

Dear Chairman Thomas and Members of the Committee:

The proposed legislation seeks to amend RSA 125-C and, as such, its primary impacts are outside of the realm of solid waste and fall more into the area of air quality regulation. However, some parts of the proposed bill do impact the solid waste program, and this letter contains comments thereon.

Paragraph II(d) of the bill prohibits the Department of Environmental Services (Department) from accepting an application without a certification signed by a local governing body that the proposed facility complies with local zoning regulations. There is nothing in the bill that requires the local body to act on an application. Further, when differing views arise on issues regarding the need for local approvals, the burden of interpreting the legalities of local zoning would be placed on the Department. The Department does not have the authority or resources to make that kind of determination. In fact, resolution of matters such as these properly belong in a court of law, while the Department makes its decisions based on regulatory requirements, science, and comment from the public.

Paragraph VI.(c) in the proposed legislation places an enormous fiscal burden on the owners of existing solid waste incinerators or the Department in that any new facility permit application, permit renewal, or permit modification requires the State or its designee to produce a detailed impact report. If the State is to undertake this requirement, it would assume the significant costs of such a report. Conversely, if the State designates a company in the private sector, and passes on the cost to the applicant, the facility owners would bear the financial burden.

Paragraph VI.(g) requires a hydrogeological report for all permit applications, modifications and renewals. There are no standards defined to judge performance, and there may be little advantage to requiring groundwater testing in a law regulating air quality when there are already other laws in the State that cover water quality issues.

Paragraph VI.(h) conflicts with RSA 149-M:3 which defines the waste management hierarchy. Since there are not many places in New Hampshire that are more than 5 miles from a residence, church, school, park, drinking source or hospital, the proposed amendment could well force construction and demolition debris to be landfilled. Also, the current wording seems to sweep in existing incinerators that may be under contract to manage waste, and also small municipal combustors that serve to meet local disposal needs.

Because these matters have such serious implications on proper waste management in New Hampshire, the Department must oppose the proposed legislation. Further, please note the facilities and distance cited in paragraph VI.(h) do not correspond with those included in SB-524.

If you have any questions regarding this letter of testimony, please do not hesitate to call me or Anthony P. Giunta, PG at 271-2905.

Sincerely,

Michael P. Nolin
Commissioner

CC: Representative Richard E. Kennedy
Representative Derek Owen
Representative Barbara C. French
Representative David P. Currier
Representative Christine C. Hamm